

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

U-SAVE AUTO RENTAL OF AMERICA, INC.)	
)	
PLAINTIFF)	
)	
V.)	NO. 3:16CV273-CWR-FKB
)	
ROBERT M. BARTON)	
)	
DEFENDANT)	

U-SAVE AUTO RENTAL OF AMERICA, INC.'S MOTION FOR RECUSAL

1. The district judge assigned to the instant case was the district judge who sat as the fact-finder at the trial of McDonnell v. Miller, No. 3:12cv697-CWR-FKB.

2. In Barton v. U-Save, et al., No. 3:16cv235-HTW-LRA, Barton referenced certain findings contained in a memorandum opinion and order in McDonnell v. Miller, No. 3:12cv697-CWR-FKB (S.D. Miss. Mar. 31, 2015 - Order and memorandum opinion) as the cornerstone of Barton's claim in Barton v. U-Save, et al., No. 3:16cv235-HTW-LRA. The referenced findings, truncated by Barton, are:

- "U-Save's financial statements were false at the time Miller acquired his initial shares, . . ."
- "McDonnell had -- to say the least -- an unorthodox way of conducting business."
- "According to Barton . . ., this was not the first time that McDonnell disguised a debt as an asset by 'papering up' a transaction with a loan for the purpose of inflating his personal and corporate net worth."
- "The Court finds that McDonnell . . . disguis[ed] his payment to Miller in the form of a promissory note in order to boost returns on personal and corporate financial statements."
- "Given that McDonnell had a record of conducting business by 'papering' up loans and the fact that Miller and Barton (two high ranking officers in the company) both testified that the promissory

note was never to be paid, the Court does not accept McDonnell's version of the facts."

Barton v. U-Save, et al., No. 3:16cv235-HTW-LRA, ECF doc. 1, pp. 5-6. Full opinion and order available at https://scholar.google.com/scholar_case?case=15122032378050793010&q=%22U-Save%27s+financial+statements+were+false%22&hl=en&as_sdt=6,43.

3. The instant case, removed from the Circuit Court of Madison County, Mississippi, which deals with the simple issue of whether Barton violated the 14-day automatic stay of Rule 62(a) of the FEDERAL RULES OF CIVIL PROCEDURE by enrolling his federal court judgment on the judgment roll of Madison County, Mississippi just ten days after the entry of the judgment as a precursor to execution, is related to the judgment rendered in U-Save v. Barton, No. 3:15cv348-DPJ-FKB, ECF doc. 28.

4. U-Save respectfully submits that given the district judge's criticism in his findings issued in the McDonnell v. Miller, a reasonable person knowing all the circumstances would harbor doubts about the judge's impartiality.

5. Judicial economy warrants re-assignment of the instant case to Judge Jordan and consolidation with U-Save v. Barton, No. 3:15cv348-DPJ-FKB since the issue in this case (improper enrollment of a federal court judgment) is directly related to the judgment rendered by Judge Jordan in U-Save v. Barton, No. 3:15cv348-DPJ-FKB, ECF doc. 28, 29.

6. U-Save respectfully requests that its motion for recusal be granted.

7. In the alternative, U-Save requests re-assignment of this case to Judge Jordan and consolidation with U-Save v. Barton, No. 3:15cv348-DPJ-FKB for judicial economy and expediency reasons as all the attendant pretrial litigation activities of a new civil action (initial disclosures, a case management conference, the issuance of a case management order, and discovery) would be a complete waste of the parties' and the court's time.

Respectfully submitted,

U-SAVE AUTO RENTAL OF AMERICA, INC.

/s/ John B. Gillis

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CERTIFICATE OF SERVICE

I hereby certify that on 18 April March 2016, I electronically filed this document with the clerk of the court using the ECF system which presumably sent notification of such filing and a link to the document to the following person:

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